

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA, et al.,
Plaintiffs,
vs. Case No. 1:10-CV-00910-WCG
NCR CORPORATION, et al.,
Defendants.

Deposition of ROBERT PAULSON
Monday, August 20, 2012
9:05 a.m.
at
U.S. DEPARTMENT OF JUSTICE
17 West Main Street
Madison, Wisconsin

Reported by Dawn M. Lahti, RPR/CRR

Deposition of ROBERT PAULSON, 8/20/12 Page 2

1 Deposition of ROBERT PAULSON, a witness
2 in the above-entitled action, taken at the instance
3 of the Defendants, pursuant to the Federal Rules of
4 Civil Procedure, before Dawn M. Lahti, RPR,
5 Certified Realtime Reporter, and Notary Public,
6 State of Wisconsin, at 17 West Main Street,
7 Madison, Wisconsin, on the 20th day of August,
8 2012, commencing at 9:05 a.m. and concluding at
9 12:47 p.m.

10 A P P E A R A N C E S:

11 U.S. DEPARTMENT OF JUSTICE ENVIRONMENTAL &
12 NATURAL RESOURCES DIVISION, by
13 Mr. Thomas J. Dawson
14 17 West Main Street
15 Madison, Wisconsin 53207
16 Appeared on behalf of Plaintiffs.

17 U.S. DEPARTMENT OF JUSTICE, by
18 Ms. Maya Abela
19 P.O. Box 7611
20 Washington, DC 20044-7611
21 Appeared by phone on behalf of the
22 Plaintiffs.

23 GREENBERG TRAURIG LLP, by
24 Mr. David G. Mandelbaum
25 2700 Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19103
Appeared on behalf of P.H.
Glatfelter Company.

HUNSUCKER GOODSTEIN & NELSON, PC, by
Mr. Marc A. Shapp
3717 Mt. Diablo Boulevard, Suite 200
Lafayette, California 94549
Appeared by phone on behalf of Menasha
Corporation.

Deposition of ROBERT PAULSON, 8/20/12 Page 3

1 APPEARANCES CONTINUED:

2 STAFFORD ROSENBAUM, LLP, by
3 Ms. Marney I. Hoefer
4 222 West Washington Avenue, Suite 900
5 P.O. Box 1784
6 Madison, Wisconsin 53701-1784
7 Appeared by phone on behalf of City of
8 Appleton.

9 DAVIS & KUELTHAU, S.C., by
10 Mr. Kevin J. Lyons
11 111 East Kilbourn Avenue, Suite 1400
12 Milwaukee, Wisconsin 53202
13 Appeared on behalf of Neenah-Menasha
14 Sewerage Commission.

15 SIDLEY AUSTIN, LLP, by
16 Mr. Jason E. James
17 One South Dearborn
18 Chicago, Illinois 60603
19 Appeared by on behalf of NCR Corporation.

20 von BRIESEN & ROPER, s.c., by
21 Mr. Terry Nilles
22 411 East Wisconsin Avenue, Suite 700
23 Milwaukee, Wisconsin 53202
24 Appeared on behalf of CBC Coating, Inc.

25

Deposition of ROBERT PAULSON, 8/20/12 Page 4

1 E X A M I N A T I O N

2
3 BY MR. MANDELBAUM 6
4 BY MR. NILLES 96
5 BY MR. JAMES 102
6 BY MR. LYONS 103
7 BY MR. NILLES 137
8 BY MR. LYONS 138

9

10 E X H I B I T S

11 EXHIBIT NO. PAGE MARKED

12 4205A List of Individuals for Fox River 16
13 Cleanup 32
14 4205B Memo of 2/21/00 44
15 4205C Article, 10/25/97 50
16 4205D Article, 2/1/98 59
17 4205E Article, 7/22/98 64
18 4205F LexisNexis Document, 6/2/00 66
19 4205G Article, 7/24/00 69
20 4205H E-mails of 6/2/00 80
21 4205I E-mails of 8/24/99

22 (Original exhibits attached to original transcript.
23 Copies of exhibits attached to copies of transcript.)
24
25

Deposition of ROBERT PAULSON, 8/20/12 Page 5

1 TRANSCRIPT OF PROCEEDINGS

2 ROBERT PAULSON, called as a witness
3 herein, having been first duly sworn on oath, was
4 examined and testified as follows:
5 MR. MANDELBAUM: Hi, Mr. Paulson. My
6 name is David Mandelbaum. I represent the
7 defendant P.H. Glatfelter Company, and we've met
8 before. Let's go around the room and on the phone
9 so that you know who everybody is.

10 MR. LYONS: Kevin Lyons, Davis &
11 Kuelthau. I represent the Neenah-Menasha Sewerage
12 Commission. Good morning again.

13 MR. NILLES: Good morning. I'm Terry
14 Nilles, von Briesen & Roper. I'm representing CBC
15 Coating otherwise formerly known as Riverside Paper
16 Company.

17 MR. JAMES: Jason James with Sidley
18 Austin representing NCR Corporation.

19 MR. DAWSON: Tom Dawson, assistant
20 attorney general, Wisconsin Department of Justice
21 here with Mr. Paulson.

22 THE WITNESS: Robert Paulson.

23 MR. MANDELBAUM: And who's on the phone,
24 please?

25 MS. ABELA: Maya Abela on behalf of the

Deposition of ROBERT PAULSON, 8/20/12 Page 6	Deposition of ROBERT PAULSON, 8/20/12 Page 8
<p>1 plaintiff, United States of America. 2 MR. SHAPP: Marc Shapp for Menasha 3 Corporation. 4 MS. HOEFER: Marney Hoefer, City of 5 Appleton. 6 MR. MANDELBAUM: Anyone else? 7 (No response.) 8 MR. MANDELBAUM: Okay. 9 EXAMINATION 10 BY MR. MANDELBAUM: 11 Q. Mr. Paulson, have you ever been deposed before? 12 A. Yes. 13 Q. How many times? 14 A. Once. 15 Q. When was that? 16 A. It would have been 19 -- or no, 2005 or '6 time 17 frame. 18 Q. In connection with this matter or a different one? 19 A. Similar. The Town of Vinland and the EPA for the 20 disposal of dredged material in the Town of Vinland 21 landfill. 22 Q. Well, it's been a while, and we like to repeat the 23 rules anyway, so I just want to go through the 24 ground rules. I'm going to start, and I'm going to 25 start asking you questions. And then when I'm</p>	<p>1 A. No. 2 Q. Are you on any medications today that would affect 3 your memory or your ability to testify? 4 A. No. 5 Q. Where do you live? 6 A. Address? 7 Q. Yes, please. 8 A. 2183 Edgewood Drive in Grafton, Wisconsin. 9 Q. And where are you employed? 10 A. WE Energies. 11 Q. WE? 12 A. Wisconsin Energy Corporation doing business as WE 13 Energies. 14 Q. WE is spelled? 15 A. W-E capital E-N-E-R-G-I-E-S. 16 Q. And where is your office? 17 A. 333 Everett Street, Milwaukee. 18 Q. Can you describe for me or would you please 19 describe for me your education after high school? 20 A. Graduated from the University of Wisconsin at 21 Stevens Point with a bachelor's of science degree. 22 Q. When was that? 23 A. December of 1981. 24 Q. Okay. 25 A. I have a master's of science degree from the</p>
Deposition of ROBERT PAULSON, 8/20/12 Page 7	Deposition of ROBERT PAULSON, 8/20/12 Page 9
<p>1 through, other people will have an opportunity to 2 ask you questions. 3 A. Okay. 4 Q. I would like you to be certain when you answer my 5 questions that you answer my questions verbally. 6 Everything you say has to be taken down by the 7 court reporter, so nodding your head like you just 8 did or saying uh-huh or yep, that doesn't work. 9 You need to use a word. 10 A. Okay. 11 Q. If at any time you don't hear or you don't 12 understand my question, please ask me to restate it 13 because if you answer my question, we'll assume 14 that you heard it and you understood it. Is that 15 fair? 16 A. Fair. 17 Q. If at any time you would like to take a break, 18 please just ask. All we ask that you do is that 19 you answer the pending question so that the break 20 comes after your answer rather than between the 21 question and your answer. 22 A. Okay. 23 Q. Are you feeling okay today? Is there any reason 24 why you can't testify truthfully and accurately 25 today?</p>	<p>1 University of Missouri in Columbia, December of 2 1984. 3 Q. And where were you employed -- were you employed 4 immediately after receiving your master's degree? 5 A. Yes. 6 Q. Where were you employed? 7 A. Johns Hopkins University, applied physics 8 laboratory. 9 Q. And what was your job? 10 A. I was an associate scientist in their submarine 11 technology group, aquatic ecology section. 12 Q. And how long did you stay at Johns Hopkins? 13 A. Almost four years -- 14 Q. And -- 15 A. -- left in October of '88. 16 Q. And where did you go after that? 17 A. After that, Hunter Environmental Services in St. 18 Louis as a consultant. 19 Q. And what were you consulting in? 20 A. Primarily aquatic toxicity testing and other 21 biological surveys that the company was doing for 22 its customers. 23 Q. How long did you stay at Hunter? 24 A. About a year. 25 Q. And then where did you go?</p>

Deposition of ROBERT PAULSON, 8/20/12 Page 10	Deposition of ROBERT PAULSON, 8/20/12 Page 12
<p>1 A. Wisconsin DNR, November of '89.</p> <p>2 Q. And what was your role at Wisconsin DNR?</p> <p>3 A. Initially was an environmental specialist in Bureau</p> <p>4 of Wastewater Management doing the biomonitoring</p> <p>5 program, managing that and wastewater permits from</p> <p>6 '89 until sometime in '92.</p> <p>7 Q. What happened in 1992?</p> <p>8 A. I transferred to the Bureau of Water before it</p> <p>9 became the Bureau of Water Management.</p> <p>10 Q. And what was your role with the Bureau of Water?</p> <p>11 A. Title was Great Lakes toxicologist doing</p> <p>12 toxicological things toward the remedial action</p> <p>13 plans that were on the Great Lakes, Lake Michigan,</p> <p>14 lake-wide management plan and contaminated</p> <p>15 sediments.</p> <p>16 Q. Did you stay in that role until you left the</p> <p>17 department, or did you have a different one?</p> <p>18 A. I took on different assignments at that point, but</p> <p>19 no, I pretty much stayed in that role until</p> <p>20 April 2002 when I left the department.</p> <p>21 Q. And where did you go in April 2002?</p> <p>22 A. I went to ReTech, an environmental consulting firm.</p> <p>23 Q. And when did you leave ReTech?</p> <p>24 A. May of 2004.</p> <p>25 Q. And where did you go after ReTech?</p>	<p>1 A. Yes.</p> <p>2 Q. What was your role at ReTech with respect to the</p> <p>3 Fox River?</p> <p>4 A. I -- in respect to the Fox River?</p> <p>5 Q. Let me back up and withdraw the question. What was</p> <p>6 ReTech's connection with the Fox River?</p> <p>7 A. ReTech was DNR's consultant that developed the</p> <p>8 remedial investigation, feasibility study, risk</p> <p>9 assessment and helped DNR craft the records of</p> <p>10 decision or proposed plan records of decision.</p> <p>11 Q. And did you work on that project for ReTech after</p> <p>12 you left?</p> <p>13 A. Yes.</p> <p>14 Q. That is after you left the department?</p> <p>15 A. After I left the department, correct.</p> <p>16 Q. Now, are there specific parts of the lower Fox</p> <p>17 River and Green Bay project that you worked on</p> <p>18 during your time at the department?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have any involvement in the Deposit A --</p> <p>21 the effort to do a remedial investigation</p> <p>22 feasibility study on Deposit A in Little Lake Butte</p> <p>23 des Morts in the early to mid-1990s?</p> <p>24 A. No.</p> <p>25 Q. Were you involved with the implementation of the</p>
Deposition of ROBERT PAULSON, 8/20/12 Page 11	Deposition of ROBERT PAULSON, 8/20/12 Page 13
<p>1 A. Minergy Corporation which is a subsidiary of</p> <p>2 Wisconsin Electric.</p> <p>3 Q. And where were you working at Minergy?</p> <p>4 A. In the Neenah, Wisconsin, engineering office as a</p> <p>5 manager of business development.</p> <p>6 Q. And you left Minergy when?</p> <p>7 A. The company was closed at the end of November 2008.</p> <p>8 Q. And then you started with WE Energy?</p> <p>9 A. I was picked up at WE Energies in the environmental</p> <p>10 department in January of '09, started with them.</p> <p>11 Q. Okay. Now, did there come a time between when you</p> <p>12 started at the department -- and I think you said</p> <p>13 1992?</p> <p>14 A. No, I started at the department in 1989.</p> <p>15 Q. 1989, my mistake. Did there come a time when you</p> <p>16 became involved with PCB contamination in the lower</p> <p>17 Fox River in Green Bay?</p> <p>18 A. Yes, approximately that '92 time frame when I</p> <p>19 transferred to Bureau of Water.</p> <p>20 Q. And were you involved with the lower Fox River and</p> <p>21 Green Bay for the entire remainder of your tenure</p> <p>22 at the department?</p> <p>23 A. In one aspect or another, yes.</p> <p>24 Q. And when you went to ReTech, did you continue</p> <p>25 working on the Fox River?</p>	<p>1 1997 agreement between the State of Wisconsin and</p> <p>2 certain companies?</p> <p>3 A. Yes.</p> <p>4 Q. Were you involved with the -- with all of the</p> <p>5 implementation of that agreement or only with</p> <p>6 certain of the projects?</p> <p>7 A. Primarily all of it as a team leader.</p> <p>8 Q. So you were involved with the Deposit N remediation</p> <p>9 project?</p> <p>10 A. Correct.</p> <p>11 Q. And you were involved with the Deposit 56 or the</p> <p>12 SMU 56/57 project?</p> <p>13 A. Correct.</p> <p>14 Q. And with the various technical evaluations that</p> <p>15 were done?</p> <p>16 A. Correct.</p> <p>17 Q. And with the natural resource damage assessment --</p> <p>18 A. Correct.</p> <p>19 Q. -- and restoration projects; yes?</p> <p>20 A. Correct.</p> <p>21 Q. Did you have involvement in the development of the</p> <p>22 remedial investigation feasibility study for the</p> <p>23 site?</p> <p>24 A. Yes.</p> <p>25 Q. Why was the Department of Natural Resources</p>

Deposition of ROBERT PAULSON, 8/20/12 Page 14	Deposition of ROBERT PAULSON, 8/20/12 Page 16
<p>1 involved in the remedial investigation feasibility 2 study? Was this a state-led site? 3 A. Well, prior to that, we had a working relationship 4 through the Fox River Coalition that was starting 5 to look at a whole river-type strategy, and to some 6 extent the work that had been done prior to that, 7 we -- DNR had the most information and most 8 knowledge of the site, and it just seemed to me -- 9 my understanding is logical to -- that the state 10 would lead that activity. 11 Q. All right. Maybe I asked the question inartfully. 12 This is -- there's no -- were you aware of any 13 formal memorandum of understanding which gave the 14 lead on this site to the State of Wisconsin, that 15 is an agreement between the State of Wisconsin and 16 the United States? 17 A. Not to my recollection. 18 Q. So there was a -- an arrangement under which DNR 19 did certain work and EPA did certain work, correct? 20 A. That's fair. 21 Q. And which was the lead agency? 22 A. In developing the RI/FS? 23 Q. Yes, please. 24 A. It was DNR as we held the contract with the 25 consultant.</p>	<p>1 MR. DAWSON: Mr. Mandelbaum, when you're 2 saying "the site," are we clear on what that means? 3 If you're going to be using that term often -- 4 MR. MANDELBAUM: Okay. Let's define that 5 then. 6 MR. DAWSON: Okay. 7 BY MR. MANDELBAUM: 8 Q. Do you understand what I mean when I say the lower 9 Fox River and Green Bay site? Do you understand 10 what I mean by that? 11 A. My understanding is that is from the outlet of Lake 12 Winnebago to the lower Fox River to the mouth of 13 Green Bay and Green Bay from the mouth of the lower 14 Fox River out to its confluence with Lake Michigan. 15 Q. Okay. Is that adequate for your purpose? 16 MR. DAWSON: Whatever definition you 17 want. At least we now have a definition. 18 MR. MANDELBAUM: Okay. 19 (Exhibit 4205A was marked for 20 identification.) 21 BY MR. MANDELBAUM: 22 Q. I'm showing you a document that has at the top, Fox 23 River Government Subject Matter Experts 24 December 1999, and it begins at Bates No. 25 EPAAR155127.</p>
Deposition of ROBERT PAULSON, 8/20/12 Page 15	Deposition of ROBERT PAULSON, 8/20/12 Page 17
<p>1 Q. So DNR had a contract with the consultant, and DNR 2 had an agreement with the United States that it 3 would oversee that contract, right? 4 A. Yes, as we got funds from EPA to do the work. 5 Q. EPA gave DNR the funds to prepare the RI/FS, to 6 prepare the PRAP and to develop the ROD, is that 7 right? 8 A. That's my understanding. 9 Q. By RI/FS, you understand I mean remedial 10 investigation and feasibility study, correct? 11 A. Yes. 12 Q. And by PRAP you understand that I mean proposed 13 remedial action plan? 14 A. Correct. 15 Q. And by ROD, you understand that I mean record of 16 decision? 17 A. Yes. 18 Q. So those were primarily DNR work product? 19 A. I'm not sure what you mean by primarily. 20 Q. DNR or its contractor prepared the draft and then 21 obtained concurrence from other parties rather than 22 concurring in someone else's draft? 23 A. That's fair. 24 Q. Now, my exhibits are going to be a little out of 25 order, so bear with me one second.</p>	<p>1 MR. LYONS: It's actually two As, David. 2 MR. MANDELBAUM: I think I said that. 3 It's EPAAR155127. Do you see that document? 4 THE WITNESS: Yes, I do. 5 BY MR. MANDELBAUM: 6 Q. Do you recognize it? 7 A. Not specifically, no. 8 Q. Are you familiar with the names on this document? 9 A. Most of them. 10 Q. Does this provide a list, perhaps not a complete 11 list but a list of individuals working on lower Fox 12 River cleanup issues in December 1999? 13 A. It appears to. 14 Q. Did you work with some or all of these people? 15 A. Yes. 16 Q. Did you work with people other than people at the 17 Department of Natural Resources? 18 A. Yes. 19 Q. On a daily or weekly basis you were working with 20 them? 21 A. Yes. 22 Q. Now, I notice that there are a number of different 23 agencies or organizations listed in the affiliation 24 column and a number of different area codes, if you 25 will, in the phone column. These people were not</p>